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UNITED STATES DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Ljudmil Kljusev, M.D.; Decision and Order

On September 15, 2017, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Ljudmil Kljusev, M.D. (hereinafter, Respondent), of Milford, Connecticut. Order to Show Cause (hereinafter, OSC), at 1. The Show Cause Order proposed the revocation of Respondent's Certificate of Registration on the ground that he does "not have authority to handle controlled substances in the State of Connecticut, the [S]tate in which . . . [he is] registered with the DEA." *Id.* at 1 (citing 21 U.S.C. 823(f) and 824(a)(3)).

As to the Agency's jurisdiction, the Show Cause Order alleged that Respondent holds DEA Certificate of Registration No. BK7295834, which authorizes him to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 227 Naugatuck Avenue, Milford, Connecticut 06460. OSC, at 1. The Show Cause Order alleged that this registration expires on December 31, 2018. *Id.*

As the substantive ground for the proceeding, the Show Cause Order alleged that Respondent is "currently without authority to practice medicine or handle controlled substances in the State of Connecticut, the [S]tate in which . . . [he is] registered with the DEA." *Id.* at 2. More specifically, it alleged that, on November 30, 2016, Respondent's "license to practice medicine in the State of Connecticut (No. 039302) lapsed; on February 28, 2015 and December 6, 2016, respectively, Respondent's Connecticut Controlled Substances Registrations, Nos.

CSP.0030952 and CSP.0059205, expired; and on February 21, 2017, Respondent “entered into an agreement with the Connecticut Department of Health in which . . . [he] agreed not to renew or reinstate . . . [his] license to practice medicine in Connecticut.” *Id.* at 1.

The Show Cause Order notified Respondent of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43). The Show Cause Order also notified Respondent of the opportunity to submit a Corrective Action Plan. OSC, at 2-3 (citing 21 U.S.C. 824(c)(2)(C)).

By letter dated October 2, 2017, Respondent requested “a hearing in the matter of Order to . . . [Show] Cause in timely manner, for why my DEA license should not be revoked or surrendered.” Hearing Request, at 1. According to the Hearing Request, Respondent “did not commit the alleged crimes of distribution of narcotics and money laundering,” although he admitted that, “[he pled] guilty and served 26 months in federal prison.” *Id.* at 2. In the Hearing Request, Respondent admitted that he “voluntarily surrendered . . . [his] medical license” and also stated that he did not surrender his DEA license because his research “found that [it] is almost impossible to get it back” and because he “must say that . . . [he is] disheartened to surrender what has been . . . [his] livelihood.” *Id.* at 6.¹

¹ By letter dated October 6, 2017, Respondent submitted a “Correction [sic] Action Plan” stating that, “Now that I understand the law of proceedings, if I had a chance to continue to practice I will secure the prescriptions and never issue any refill without personally having seen those patients and will be having a licensed medical practitioner on site.” Corrective Action Plan, at 3. Respondent’s Corrective Action Plan also stated that, “[S]hould I continue to be able to prescribe, I will assure that I implement all the safe modes of practices, bill only for the visits that I conduct face to face, not over the Skype and will never prescribe controlled substances again if necessary.” *Id.*

By letter dated December 5, 2017, the Acting Assistance Administrator, Diversion Control Division, responded to Respondent’s Corrective Action Plan. “After careful review,” she stated, “I deny the request to discontinue or defer administrative proceedings.” Corrective Action Plan Denial, at 1. She added that, “I have determined there is no potential modification of your [Proposed Corrective Action Plan] that could or would alter my decision in this regard.” *Id.*

The Office of Administrative Law Judges put the matter on the docket and assigned it to Administrative Law Judge Mark M. Dowd (hereinafter, ALJ). I adopt the following statement of procedural history from the ALJ's Order Granting the Government's Motion for Summary Disposition and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge dated November 15, 2017 (hereinafter, R.D.).

Th[e ALJ], on October 11, 2017, ordered the Government to file evidence to support the allegations that the Respondent lacked state authority to handle controlled substances by October 23, 2017.² Moreover, the Respondent was given until November 9, 2017, to file a response to any allegations made by the Government.³

On October 19, 2017, the Government filed a Motion for Summary Disposition (Government's Motion), seeking a recommended decision granting the Government's Motion and recommending revocation. Gov't Mot. at 5. The Government provided evidence that the Respondent voluntarily surrendered his license to practice as a physician and surgeon through the Declaration of . . . [a DEA Diversion Group Supervisor], the Respondent's "Voluntary Agreement Not To Renew Or Reinstate License," a notarized letter from the Practitioner License and Investigations Section of the Connecticut Department of Public Health, and the State of Connecticut License Lookup website report. Gov't Mot. at Attch. 1; Gov't Mot. at Ex. 1; Gov't Mot. at Ex. 2; Gov't Mot. at Ex. 3. As to the Respondent's State of Connecticut Controlled Substance Registrations, the Government . . . searched the State of Connecticut License Lookup website, where the Government produced evidence that the Respondent's Controlled Substances Registrations no. CSP.0030952 and CSP.0059205 remain 'inactive' and expired on February 28, 2015, and December 6, 2016, respectively, Gov't Mot. at Ex. 4, 5.

To date, the Respondent failed to file any response to the Government's Motion or evidence produced.

R.D., at 2-3.

² The October 11, 2017 document that the R.D. references is the ALJ's Order Directing the Filing of Government Evidence of Lack of State Authority Allegation and Briefing Schedule, at 1.

³ The document the R.D. references is the document described in footnote 2, at 2.

In his R.D., the ALJ granted the Government's Motion for Summary Disposition, and recommended that Respondent's registration be revoked and that any pending applications for its renewal be denied.

At this juncture, no dispute exists over the fact that the Respondent currently lacks state authority to handle controlled substances in Connecticut due to his voluntary surrender of his license to practice as a physician and surgeon on February 21, 2017 Because the Respondent lacks state authority at the present time, Agency precedent dictates that he is not entitled to maintain his DEA registration. Simply put, there is no contested factual matter that could be introduced at a hearing that would, in the Agency's view, provide authority to allow the Respondent to continue to hold his . . . [DEA registration].

Id. at 5. By letter dated December 15, 2017, the ALJ certified and transmitted the record to me for final agency action. In that letter, the ALJ stated that neither party filed exceptions and that the time period to do so had expired.

I issue this Decision and Order based on the entire record before me. 21 CFR 1301.43(e). I make the following findings of fact.

FINDINGS OF FACT

Respondent's DEA Registration

Respondent is the holder of DEA Certificate of Registration No. BK7295834, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 227 Naugatuck Avenue, Milford, Connecticut 06460. Declaration of DEA Diversion Group Supervisor dated October 18, 2017 (hereinafter, GS Declaration), at 1. Respondent's registration expires on December 31, 2018. *Id.*

The Status of Respondent's State License

On February 21, 2017, Respondent signed a "Voluntary Agreement Not to Renew or Reinstate License" (hereinafter, Voluntary Agreement) prepared by the Connecticut Department

of Public Health. *Id.* On February 28, 2017, a Public Health Services Manager of the Practitioner Licensing and Investigations Section, Healthcare Quality & Safety Branch of the Connecticut Department of Public Health, accepted Respondent's Voluntary Agreement. In the Voluntary Agreement, Respondent stated that his license to practice as a physician and surgeon, license number 039302, lapsed on November 30, 2016. Voluntary Agreement, at 1. He "voluntarily" agreed "not to renew or reinstate" that license. *Id.*

By notarized letter dated October 16, 2017 (hereinafter, Certification of Lack of State Authority), a License and Applications Specialist of the Practitioner Licensing and Investigations Section certified that Respondent "voluntarily agreed not to renew or reinstate his Connecticut license," and that Respondent "is not authorized to practice medicine in the [S]tate of Connecticut." Certification of Lack of State Authority, at 1. Further, according to the online records of the State of Connecticut, of which I take official notice, I find that Respondent is still not authorized to practice medicine in Connecticut.⁴

According to Connecticut's online records, of which I also take official notice, Respondent no longer has authority to handle controlled substances in Connecticut.⁵ Connecticut Controlled Substance Registration No. CSP.0030952, issued to Respondent on March 7, 2013, expired on February 28, 2015, and Connecticut Controlled Substance Registration No. CSP.0059205, issued to Respondent on January 9, 2015, expired on December

⁴ Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding – even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. § 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Respondent may dispute my finding by filing a properly supported motion for reconsideration within 20 calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a copy shall be served on the Government. In the event Respondent files a motion, the Government shall have 20 calendar days to file a response.

⁵ See footnote 1. If Respondent disputes this finding, he may do so according to the terms stated in footnote 1.

6, 2016. State of Connecticut's eLicense Website, <https://www.elicense.ct.gov> (last visited June 20, 2018). Connecticut's online records show no active Connecticut Controlled Substance Registration issued to Respondent. *Id.*

Accordingly, I find that Respondent currently is without authority to engage in the practice of medicine or to handle controlled substances in Connecticut, the State in which he is registered.

DISCUSSION

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA), “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.*, 76 FR 71,371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to

dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess State authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he practices. *See, e.g., Hooper, supra*, 76 FR at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 FR 11,919, 11,920 (1988), *Blanton, supra*, 43 FR at 27,617.

According to the Connecticut statute concerning Controlled Substance Registration, “[e]very practitioner who distributes, administers or dispenses any controlled substance or who proposes to engage in distributing, prescribing, administering or dispensing any controlled substance within this [S]tate shall . . . obtain a certificate of registration issued by the Commissioner of Consumer Protection in accordance with the provisions of this chapter.” Conn. Gen. Stat. Ann. § 21a-317 (West, Westlaw through enactments of Public Acts enrolled and approved by the Governor on or before April 27, 2018 and effective on or before April 27, 2018). *See also* Conn. Gen. Stat. Ann. § 21a-316 (West, Westlaw through enactments of Public Acts enrolled and approved by the Governor on or before April 27, 2018 and effective on or before April 27, 2018) (“Practitioner,” for purposes of Controlled Substance Registration, “means . . . [a] physician . . . or other person licensed, registered or otherwise permitted to . . . dispense . . . [or] administer a controlled substance in the course of professional practice” in Connecticut) and Conn. Agencies Regs. § 21a-326-2(e) (1984) (“Practitioner” is a registration classification and includes “M.D.”).

Here, there is no dispute about the material fact that “Respondent currently lacks [S]tate authority to handle controlled substances in Connecticut due to his voluntary surrender of his license to practice as a physician and surgeon on February 21, 2017” and the expiration of his Connecticut Controlled Substance registrations. R.D., at 5. I will therefore order that Respondent’s DEA registration be revoked.

Given my findings that Respondent lacks authority in Connecticut to dispense controlled substances, I agree with the former Acting Assistant Administrator of the Diversion Control Division, and I find that Respondent’s Corrective Action Plan provides no basis for me to discontinue or defer this proceeding. 21 U.S.C. 824(c)(3).

ORDER

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration No. BK7295834 issued to Ljudmil Kljusev, M.D., be, and it hereby is, revoked. This Order is effective [INSERT DATE THIRTY DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Dated: June 20, 2018.

Robert W. Patterson,

Acting Administrator.

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